IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 976 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHARMESH CHANDRAKANT PATIL, - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SUNIL K SHAH for Applicant(s) : 1,
MR MENGDE, APP, for Respondent(s) : 1,
MR PP MAJMUDAR for Respondent(s) : 2,
MR SHAKTI S JADEJA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/08/2007

ORAL JUDGMENT

Rule. Learned Advocate Shri P.P. Majmudar waives service of Rule on behalf of respondent No.2 –

original accused and learned APP Shri Mengde, waives service of Rule on behalf of Respondent No.1 – State. With the consent of learned Advocates for the respective parties the matter is taken up for final disposal today.

By way of this petition under Article 227 of the Constitution of India the petitioner – original complainant has prayed for appropriate direction and order to quash and set aside the Judgment and order dated 17.12.2005 passed by the learned Metropolitan Magistrate, court No.9 at Ahmedabad in Criminal Complaint No.2758 of 1998 and to restore the complaint on file before the learned Metropolitan Magistrate at Ahmedabad.

The complaint filed by the petitioner against the respondent No.2 for the offence u/s. 138 of the Negotiable Instrument Act has been dismissed in default as the learned Advocate appearing on behalf of the petitioner did not remain present and even the petitioner also did not remain present before the Court. This Court is conscious of the fact that dismissal of the complaint u/s. 138 of the Negotiable Instrument Act (for short “the Act”) can be said to be acquittal and the same is appealable. However, in view of the fact that there is a broad consensus between the parties the present petition is entertained without, in any way, laying down the law that it is not maintainable. Hence, the present petition is entertained. However, there is consensus

of the parties to remand the matter before the Court of learned Metropolitan Magistrate, Ahmedabad, on imposing some cost this petition is entertained. Shri Majmudar appearing on behalf of the respondent No.2 – original accused has submitted that as there is no fault on the part of the respondent, therefore, appropriate cost be awarded while remanding the matter to the learned trial Court. This Court has already passed an order directing the petitioner to deposit the amount of Rs.2500/- towards the probable cost of the present Application and it is reported that the same has been deposited with the Registry of this Court. Considering the broad consensus between the parties to remand the matter to the learned Trial Court by quashing and setting aside the order passed by the learned trial Court dismissing the application for default the impugned order of the learned Metropolitan Magistrate, Court No.9, Ahmedabad, dated 17.12.2005 passed in Complaint No.2758 of 1998, is hereby quashed and set aside and the matter is remanded to the learned trial Court for deciding the same afresh in accordance with law and on merit. Shri Shah, learned Advocate, appearing on behalf of the petitioner, has assured this Court that he will remain present before the Criminal Court and will fully co-operate the learned trial Court.

Office is directed to pay the amount of Rs.2500/-, deposited by the petitioner, to the learned Advocate appearing on behalf of the respondent No.2 by A/c Payee Cheque. Petitioner is

also directed to pay a further sum of Rs.2500/- to the respondent no.2 directly by Demand Draft and/or Pay Order within a period of three weeks from today. Only on such payment the aforesaid complaint No.2758 of 1998 is treated as restored to the file. On such deposit the learned trial Court is directed to decide the said complaint in accordance with law and on merit, as early as possible.

Rule made absolute to the aforesaid extent only.

Direct service permitted.

(M. R. SHAH, J.)

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